



**UNITED STATES DEPARTMENT OF COMMERCE  
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BC-8

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/879,322    06/20/97    HODGSON    A    14136

WM31/1212

RAYMOND M. MEHLET  
COOK, ALEX, MCFARRON, MANZO, CUMMINGS &  
200 W. ADAMS, SUITE 2850  
CHICAGO IL 60606

EXAMINER

DASTOURI, M

ART UNIT

PAPER NUMBER

2623

18

DATE MAILED:

12/12/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

**Advisory Action**Application No.  
**08/879,322**Applicant(s)  
**Hodgson et al**Examiner  
**Mehrdad Dastouri**Group Art Unit  
**2623**

## THE PERIOD FOR RESPONSE: [check only a) or b)]

- a) ☒ expires Three months from the mailing date of the final rejection.
- b) ☐ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☐ Appellant's Brief is due two months from the date of the Notice of Appeal filed on \_\_\_\_\_ (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on Nov 21, 2000 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:

- ☐ The proposed amendment(s):
- ☐ will be entered upon filing of a Notice of Appeal and an Appeal Brief.
  - ☐ will not be entered because:
    - ☐ they raise new issues that would require further consideration and/or search. (See note below).
    - ☐ they raise the issue of new matter. (See note below).
    - ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
    - ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- ☐ Applicant's response has overcome the following rejection(s): \_\_\_\_\_  
\_\_\_\_\_

- ☐ Newly proposed or amended claims \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.
- ☒ The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Attached.
- ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
- ☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):
- Claims allowed: \_\_\_\_\_
- Claims objected to: \_\_\_\_\_
- Claims rejected: 1-10 and 12-20
- ☐ The proposed drawing correction filed on \_\_\_\_\_ ☐ has ☐ has not been approved by the Examiner.
- ☐ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Other

Art Unit: 2623

## DETAILED ACTION


### *Response to Request for Reconsideration*

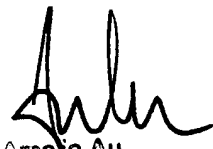
1. Applicants' request for reconsideration filed, November 21, 2000, has been entered and made of record.

2. Applicants' arguments have been fully considered, but they are not persuasive.

The declaration is ineffective in view of the contradictory statements in Paragraphs 3 and 4 of the declaration regarding the date of Exhibit "F".

Regarding Claim 1, prior art of record (Queisser et al) disclose an apparatus or process for measurement of fruit particles in a **matrix**. The Examiner asserts that the sample tray utilized in the Queisser et al invention contains a matrix or a two-dimensional array of food products. This interpretation is in compliance with definition 9 of Webster Dictionary and definition 8 of the American Heritage Dictionary.

  
Mehrdad Dastouri  
Patent Examiner  
Group Art Unit 2623  
December 4, 2000

  
Arnold Au  
Supervisory Patent Examiner  
Telephone: 2700